

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

OSCAR MUÑOZ CORTEZ, ) Case No.: 10-CV-03479-LHK  
Plaintiff, )  
v. ) ORDER DISMISSING CASE FOR  
JEFFREY LYNN JOHNSON; ROOF GUARD ) FAILURE TO PROSECUTE  
ROOFING COMPANY, INC.; and ROOF )  
GUARD COMPANY, INC., )  
Defendants. )

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This case was filed on August 9, 2010, and was set for an initial Case Management Conference before the undersigned Judge on November 24, 2010. On November 17, 2010, the parties submitted a joint case management statement stating that all parties consented to proceed for all purposes before a Magistrate Judge. Dkt. No. 11. Accordingly, the case was reassigned to Magistrate Judge Lloyd on November 19, 2010. On March 25, 2010, Judge Lloyd set a Case Management Conference and ordered that the parties file a statement either consenting or declining to proceed before him by April 5, 2011. On April 4, 2011, the Plaintiff filed a statement consenting to proceed before Judge Lloyd, but the Defendants filed a statement declining to proceed before him. The case was subsequently re-assigned to the undersigned Judge on April 6, 2011. The Court ordered the parties to submit a Joint Case Management Statement so that a case schedule could be set. In the Joint Case Management Statement, Plaintiff's counsel stated that his client had "broken off communications with him."<sup>1</sup>

1       The Court held a case management conference on June 8, 2011. At the case management  
2 conference, Plaintiff's counsel represented that his client has refused to communicate with him  
3 since December, 2010. Counsel for both parties indicated that the cell phone number they had for  
4 Plaintiff has been disconnected, and that Plaintiff has failed to respond to communications sent to  
5 his last known address (1918 Alum Rock Ave., Apt. 207, San Jose, CA 95116).

6       Plaintiff's counsel moved to withdraw on June 13, 2011. In his motion to withdraw,  
7 Plaintiff's counsel states that on November 12, 2010, Plaintiff contacted his attorney and  
8 "explained in a cryptic manner that he did not want to continue with the case." Plaintiff's counsel  
9 has not communicated with his client since then.

10      On June 8, 2011, the Court issued an Order to Show Cause why the case should not be  
11 dismissed for failure to prosecute. The Order set a hearing on June 30, 2011, and ordered that  
12 "Plaintiff must appear at this hearing in person, or the case will be dismissed for failure to  
13 prosecute." Plaintiff did not appear at the June 30, 2011 hearing. It appears that Plaintiff has  
14 abandoned this case. Accordingly, the Court GRANTS Plaintiff's counsel's Motion to Withdraw  
15 and DISMISSES this case without prejudice for failure to prosecute. The Clerk shall close the file.

16 **IT IS SO ORDERED.**

17 Dated: July 1, 2011



18 LUCY H. KOH  
United States District Judge